

13. The product of claim 12, wherein the concentration of the compound is in the range of from about 0.2 ppm to about 25 ppm.

14. The product of claim 12, wherein the absorbent material is selected from the group consisting of a natural fiber, a synthetic fiber, a film, a foam, a wood, a pulp, a peat moss, and a superabsorbent polymer.

REMARKS

In the Office Action dated June 20, 2002, the Examiner rejected Claims 1-14 under 35 U.S.C. §112, second paragraph, as being indefinite, and Claims 9-11 under 35 U.S.C. §102 and §103 as being either obvious or not novel in view of Nutter et al. The Applicants have cancelled Claims 9-11, leaving the indefiniteness rejection under §112, second paragraph, as the only remaining issue.

The Examiner rejected Claims 1-14 as being indefinite because of the use of the term "mixtures thereof, and combinations thereof" in Claims 1, 9 and 12. In making this rejection, the Examiner noted that a Markush group is cited in the claim, thus, open language such as "mixtures thereof, and combinations thereof" should be avoided.

The Applicants acknowledge that the use of the term "mixtures thereof, and combinations thereof" is unnecessary due to the open structure of the Markush group. Due to the open structure of the Markush group, the claims inherently encompass mixtures and combinations of the compounds listed. The Applicants have therefore amended Claims 1 and 12 in accordance with the Examiner's request. Claim 9 has been cancelled.

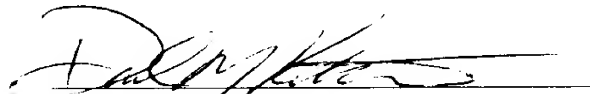
The Examiner also rejected Claims 2, 10 and 13 as being indefinite because of the use of the term "about" in association with the specified ranges. The Applicants respectfully submit, however, that the term "about" does not render the claims indefinite. As indicated in MPEP 2173.05(b), the term "about" may be used if the specification or prosecution history provide any indication as to what range of specific activity is covered by the term "about". (citing *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 18 U.S.P.Q.2d 1016 (Fed. Cir. 1991.)) Here, the use of the term "about" provides a clear but modest degree of flexibility to the claims in order to cover the application of compounds that, when concentrations are rounded to the appropriate integer, reside in the ranges as specified. Moreover, it is quite clear by both the claims and the

specification that the term "about" specifically covers the application of the compound in an amount effective to kill, inhibit, or otherwise control the growth or proliferation of *S. aureus* without preventing the growth of *Lactobacillus*. Claims 2 and 13 are, therefore, definite as infringement could clearly be assessed based on the concentration of the compound, when rounded to the appropriate integer, and the compounds ability to kill, inhibit, or otherwise control the growth or proliferation of *S. aureus* without preventing the growth of *Lactobacillus*.

For the foregoing reasons, the Applicants respectfully submit that Claims 1-8 and 12-14 are in a condition for allowance, and request reconsideration of the merits of this application.

No fee is believed due in connection with this response, however, should any fee be due, please charge the fee to Deposit Account No. 17-0055. Should any extension of time be due in this or any subsequent response, please consider this a request for the appropriate extension of time and a request to charge any fee due in that regard to the same deposit account.

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

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Group Art Unit: 1653

For: USE OF HOP ACIDS TO INHIBIT GROWTH OF
STAPHYLOCOCCUS AUREUS AND PREVENT
TOXIC SHOCK SYNDROME

In the Claims

Please cancel claims 9-11, and amend Claims 1 and 12 as follows:

1. (Amended) A method for affecting the growth of *Staphylococcus aureus*, said method comprising the step of:

contacting an environment containing *S. aureus* with a compound selected from the group consisting of hexahydro beta acids, hexahydro beta salts, tetrahydroiso alpha acids, and tetrahydroiso alpha salts, [mixtures thereof, and combinations thereof,] in an amount effective to kill, inhibit, or otherwise control the growth or proliferation of *S. aureus* without preventing the growth of *Lactobacillus*.

9-11. Cancelled.

12. (Amended) A product comprising an absorbent material, and a compound selected from the group consisting of hexahydro beta acids, hexahydro beta salts, tetrahydroiso alpha acids, and tetrahydroiso alpha salts, [mixtures thereof, and combinations thereof,] in an amount effective to kill, inhibit, or otherwise control the growth or proliferation of *S. aureus* without preventing the growth of *Lactobacillus*.